

## **REMARKS**

Claims 41-70 remain in the application. Reconsideration of the application in view of the Terminal Disclaimer and the remarks to follow is requested.

The Examiner objects to the title. However, the title recites language which is verbatim from the preamble of each pending claim. Accordingly, Applicant submits the title is proper as written.

Claims 41-70 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 6,355,985. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) is enclosed to overcome the rejection based on a nonstatutory double patenting ground. Said disclaimer also provides information that the conflicting application or patent is shown to be commonly owned with this application. In view of this submission of the Terminal Disclaimer, the obviousness-type double patenting rejection should be withdrawn.

Regarding the §103 rejection against claims 41-70 based on Corisis et al. (6,326,687), the use of Corisis et al. as prior art is improper under Section 35 U.S.C. §103(c). That is, Corisis and the above-referenced application are commonly owned, and pursuant to §103(c), MPEP §706.02(I)(3) (8<sup>th</sup> Ed.) states that such commonly owned reference is disqualified when:

- (a) proper evidence is filed [referring to the statement of common ownership];
- (b) the reference qualifies under 35 U.S.C. §102(e) for applications filed on or after November 29, 1999; and
- (c) the reference is used in an obviousness rejection under 35 U.S.C. §103(a).

In compliance with such authority, a separate statement establishing common ownership is filed herewith. The Corisis reference qualifies as a §102(e) reference and is used in an obviousness rejection against claims 41-70. Moreover, the above-referenced application was filed after the November 29, 1999 deadline. Accordingly, the requirements of MPEP §706.02(l)(3) (8<sup>th</sup> Ed.), and therefore §103(c), are met. Consequently, the obviousness rejection against claims 41-70 based on Corisis is inappropriate and should be withdrawn. Applicant respectfully requests withdrawal of such rejection in the next office action.

Since no other rejections are presented against the claims, such claims are allowable.


Further, Applicant herewith submits a duplicate copy of the Information Disclosure Statement and Form PTO-1449 filed together with this application on February 5, 2002 and the Supplemental Information Disclosure Statement and Form PTO-1449 filed in this application on January 21, 2003. No initialed copies of the PTO-1449s have been received back from the Examiner. To the extent that the submitted references listed on the Form PTO-1449s have not already been considered, and the Form PTO-1449 have not been initialed with a copy being returned to Applicant, such examination and initialing is requested at this time, as well as return of a copy of the initialed Form PTO-1449s to the undersigned.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next

anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted,

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